

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

**ANTONIO HANSERD v. RICKY BELL, WARDEN
AND STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County
No. 3719 Steve Dozier, Judge**

No. M2006-00486-CCA-R3-HC - Filed October 10, 2006

The Petitioner, Antonio Hanserd, appeals from the order of the trial court dismissing his petition for habeas corpus relief. The State has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. The State's motion is granted. The judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed Pursuant
to Rule 20, Tenn. Ct. Crim. App. R.**

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Antonio Hanserd, Pro Se.

Paul G. Summers, Attorney General and Reporter; David Edward Coenen, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Pamela Anderson, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

According to his petition for habeas corpus relief, the Petitioner pleaded guilty to second degree murder on April 12, 2004. Pursuant to his plea agreement, the Petitioner received a sentence of seventeen years in the Department of Correction.

On January 31, 2006, the Petitioner filed a petition for a writ of habeas corpus. Before the State had an opportunity to file a responsive pleading, the trial court issued an order summarily dismissing the petition because the petition did not allege grounds which, even if true, showed that

the Petitioner was entitled to habeas corpus relief. It is from the order of the trial court dismissing the petition for habeas corpus relief that the Petitioner appeals.

The petition alleged that the trial court lacked jurisdiction and was without authority to sentence the Petitioner because the trial court did not have the Petitioner mentally evaluated. He further alleged that his sentence was void and illegal because the trial court was without authority to sentence him because the trial court failed to inquire into the Petitioner's "mental health." He also alleged that his seventeen-year sentence for second degree murder is in direct contravention of the sentencing statute because it is an inappropriate sentence. He argues that it is inappropriate because it is not the least severe measure necessary to achieve the sentencing purposes. He also asserts that his sentence, predicated upon a plea agreement, violated his right to a jury trial.

We first note that the State is correct in its contention that the Petitioner failed to comply with the mandatory requirements of Tennessee Code Annotated section 29-21-107 because the Petitioner failed to attach a copy of his judgment of conviction to his petition and failed to give a satisfactory reason for not doing so. The procedural requirements are mandatory and must be followed scrupulously. See Hickman v. State, 153 S.W. 3d 16, 21 (Tenn. 2004). The trial court could properly have dismissed the petition for this reason.

Article 1, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief and Tennessee Code Annotated sections 29-21-101 et seq. codify the applicable procedures for seeking a writ. However, the grounds upon which our law provides relief are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). Habeas corpus relief is available in Tennessee only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that (1) the convicting court was without jurisdiction or authority to sentence a defendant; or (2) the defendant's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). Thus, the grounds upon which habeas corpus relief will be granted are very narrow. State v. Ritchie, 20 S.W.3d 624, 630 (Tenn. 2000). It is permissible for a trial court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n. 2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

We have examined the petition and we conclude that the trial court was correct in determining that the petition did not state a colorable claim for habeas corpus relief. The allegations raised by the petition, even if true, would not render the judgment of conviction void. The allegations concerning his sentence do not demonstrate that his sentence is not authorized by law. There is nothing in this record to suggest that the trial court was without jurisdiction or authority to sentence the Petitioner to seventeen years for his conviction of second degree murder. The Petitioner does not allege that his sentence has expired.

Because the petition, along with the attachments, failed to state a cognizable claim for habeas corpus relief and failed to comply with the procedural requirements of our law, we conclude that the trial court properly dismissed the petition without a hearing and without appointing counsel. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee.

DAVID H. WELLES, JUDGE